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In the

Supreme Court of the United States

No. 1011

OCTOBER TERM, 1945

JOHN P. HUDOCK, Executor of the Estate of Michael G. Hudock, Deceased,
Petitioner,

v.

WILLIAM C. FREEMAN, Secretary of Banking of the Commonwealth of Pennsylvania, Receiver of Pennsylvania Liberty Bank and Trust Company,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

JAMES H. DUFF,
Attorney General of Pennsylvania,
JOHN W. LORD, JR.,
Special Deputy Attorney General,
LEO W. WHITE,
Special Counsel for Closed Banks
Gazette Building,
37 Broad Street,
Pittston, Pennsylvania,
Counsel for Respondent

Murrelle Printing Company, Law Printers, 201-203 Lockhart St., Sayre, Pa
Kenneth L. Morgan, Luzerne County Representative, Wilkes-Barre, Pa.

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IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1945. No. 1011

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v.

William C. Freeman, Secretary of Banking of the Commonwealth of Pennsylvania, Receiver of Pennsylvania Liberty Bank and Trust Company

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The respondent respectfully submits this brief in opposition to the petition for *certiorari* herein on behalf of John P. Hudock, Executor of the Estate of Michael G. Hudock, Deceased, petitioner.

REASONS FOR REFUSING THE WRIT

No Reviewable Federal Question of Substance is Presented

The Supreme Court of Pennsylvania in *Bell, Secretary of Banking v. Cabalik*, 346 Pa. 115 (1943), decided that the merger, under the Pennsylvania Consolidation Act of May 3, 1909, P. L. 408, of two banks, both formed under the Act of May 13, 1876, P. L. 161, as amended, did not absolve the shareholders of the resultant banking corporation from the individual liability imposed upon them by Section 5 of the Act of 1876, as follows:

> "The shareholders of any corporation formed under this act shall be individually responsible, equally and ratably, but not one for the other, for all contracts, debts, and engagements of such corporation to the amount of their stock therein, at the par value thereof, in addition to the par value of such shares."

There, as here, the unsuccessful defendant sought a review by the Supreme Court of the United States on the ground of alleged conflict with the 14th Amendment to the Federal Constitution. There, as here, the case did not present a federal question of substance and a writ of certiorari was denied: 318 U. S. 785, 87 L. Ed. 1152.

The Supreme Court of Pennsylvania has twice determined that all the stockholders of the closed Pennsyl-

vania Liberty Bank and Trust Company are liable for assessment: *Freeman, Secretary of Banking v. Hiznay, et al.*, 349 Pa. 84 (1944), and the case at bar, *Freeman, Secretary of Banking, v. Hudock, Executor*, 353 Pa. 345 (1946), in each of which the opinion was written by Mr. Justice Horace Stern. In the latter case the Justice specifically points out that his decisions rest upon a construction of the applicable Pennsylvania statutes (R. 52-53):

> "We have carefully considered the argument of appellant's counsel, amounting in effect to a reargument of the Hiznay case, but see no reason to change the conclusion there reached. We find nothing in the Consolidation Act of May 3, 1909, P. L. 408, to indicate an intention on the part of the legislature that the statutory liability of the shareholders, in the aggregate amount existing before the consolidation, should not be continued for the benefit of the creditors of the consolidated corporation. In Bell, Secretary of Banking v. Cabalik, 346 Pa. 115, 209 A. 2d 678, we specifically held that notwithstanding a consolidation of banking corporations under the Act of 1909 the statutory liability of the shareholders imposed by the Act of 1876 continued.
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> "The more difficult problem considered in the Hiznay case was whether this statutory liability of $200,000 should be divided equally among all shareholders of the new corporation, or whether the latter should be separated into two classes, one made up of those who obtained their stock in exchange for that held by them in the bank and the other of those who obtained their stock in exchange for that held by them in the title insurance company. In deciding that the

liability should be prorated equally among all the shareholders, we did not, as appellant contends, usurp a legislative function nor rest our decision merely upon a practical basis that appeared to be just and equitable, but we construed the Consolidation Act of 1909 to intend that result."

It is a well established principle of law that courts of a state have the supreme power to interpret and declare the written and unwritten laws of the state, and the mere fact that a state court may have rendered an erroneous decision on a question of state law, does not give rise to a claim under the 14th Amendment of the United States Constitution: *Brinkerhoff-Farris Trust & Savings Company, Petitioner v. Walter O. Hill, Treasurer, etc.*, 281 U. S. 673, 74 L. Ed. 1107, 1113.

The Supreme Court of the United States is bound by the construction given to a state statute by the highest court of the state as though the meaning so fixed had been expressed in the statute in specific words: *Guaranty Trust Company of New York, as Executor of the Last Will and Testament of Harriet D. Sewell, Deceased, Appt. v. William H. Blodgett, Tax Commissioner*, 287 U. S. 509-513, 72 L. Ed. 463.

The above principle applies to the instant case and demonstrates beyond peradventure that any alleged federal question here presented lacks substance and cannot be reviewed. The Supreme Court of Pennsylvania had every right to construe the applicable Pennsylvania statutes as authorizing the stock assessment upon all share-

holders of the consolidated bank.[1] Its decision, even though it be a misconstruction (or as petitioner says, a misapplication—B. 12, 13) of the law, presents no reviewable federal question: *King v. West Virginia*, 216 U. S. 92, 54 L. Ed. 396. Assuming, though not conceding, it could be shown that the decision of the Supreme Court of Pennsylvania, in the case at bar, is in conflict with or overrules prior pronouncements of the same Court in the cases cited here in petitioner's brief, nevertheless, the decision is not reviewable here for there is no constitutional right to have all general propositions of law, once adopted, remain unchanged: *Patterson v. Colorado*, 205 U. S. 454, 51 L. Ed. 879.

CONCLUSION

We believe, in view of the foregoing, that petitioner's rights were fairly and finally determined in the Court below, that he is not entitled, by law, to be again heard,

[1] The doctrine that there should be no stockholders' double liability unless a statute establishes it is not absolute: Anderson, Receiver, v. Abbot, Admx. c. t. a. etc., 321 U. S. 349, 88 L. Ed. 793 (1944) in which, upon principles of law other than statutory, the Supreme Court of the United States imposed assessment liability upon the shareholders of a holding company owning stock of a closed national bank, without distinction between those who purchased stock of the holding company for cash and those who acquired its stock in exchange for shares of the Bank. Together they shared the benefits of stock ownership by the holding company of the subsidiary national bank, including control.

in this Court, and that his petition for a writ of certiorari should be denied.

Respectfully submitted,

JAMES H. DUFF,
Attorney General of Pennsylvania,

JOHN W. LORD, JR.,
Special Deputy Attorney General,

LEO W. WHITE,
Special Counsel for Closed Banks,
Counsel for Respondent.